THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21249 OF 2006

Dated: 16th October, 2006.

Between:

M/s. Shree Venkatadri Textile Mills (P) Ltd.,
Cherlapally, Hyderabad, rep. by its
Managing Director Sri Silari Satyanarayana .. Petitioner

And

1. State Bank of Hyderabad, rep. by its
   Regional Manager, Motilal Nagar, Begumpet,
   Region-II, Hyderabad-500 016 and3 others. … Respondents

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ORDER :

This writ petition is filed seeking a declaration that the action of the 3rd respondent Bank in auctioning the 3-storied residential house bearing No.1-93, comprised in Sy.No.28, Hari Co-operative Society, Padmavathi Nagar, Allapur village, Balanagar, Hyderabad on 8-9-2006 in violation of Section 13 (3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Rules 8 (5) & (6) and Rule 9 (2) of The Security Interest (Enforcement) Rules, 2002 as arbitrary, illegal and consequently to set aside the same.

It is not in dispute that the petitioner availed cash credit limits of Rs.25,00,000/- and Rs.9,00,000/- from the 3rd respondent Bank by creating equitable mortgage of certain immovable properties including the house in question. It is also not in dispute that the said loan account has been classified as Non-Performing Asset (NPA) and having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') the 3rd respondent Bank issued a notice under Section 13 (2) of the Act dated 18-7-2005 calling upon the petitioner to pay a sum of Rs.56,52,129/- being due as on 30-6-2005 within 60 days. Having taken further steps under the Act, the 3rd respondent bank issued auction notice dated 14-8-2006 bringing the house property in question to sale. Pursuant to the said notice, auction was conducted

on 8-9-2006 and the 4th respondent was declared as the highest bidder for a sum of Rs.24,00,000/-. Questioning the said auction, this writ petition has been filed on 12-10-2006 contending inter alia that the auction conducted by the 3rd respondent was not in accordance with the provisions of the Rules made under The Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules'). It is contended that the auction was conducted for a meagre sum of Rs.24,00,000/- deliberately so as to cause financial loss and hardship to the petitioner. It is also contended that the sale was conducted without taking over the possession of the secured assets as required under Section 13 (4) of the Act.

However, the petitioner did not dispute the fact that the possession notice under Section 13 (4) of the Act was issued on 6-12-2005.

The learned Counsel for the petitioner vehemently contended that since the offer made by the petitioner for One Time Settlement (OTS) is still pending consideration, the respondents are not justified in bringing the property to sale. It is also contended that the sale was conducted without following the mandatory procedure of obtaining valuation of the property from the approved valuer and in consultation with the secured creditor. It is contended that the procedure followed by the respondents while fixing the reserve price of the property in question was not in accordance with law and therefore the entire sale proceedings are vitiated and liable to be set aside.

From the material on record, it is clear that the sale has already taken place on 29-9-2006. It is also not in dispute that the 3rd respondent issued a notice under Section 13 (2) as well as Section 13 (4) of the Act and the petitioner was very well aware of the same. All the contentions raised by the petitioner go to show that the only question requires to be considered is whether the sale held on 29-9-2006 is vitiated on account of alleged irregularities in conducting the sale proceedings. The said issue which involves several disputed

questions of fact cannot be enquired into and decided by this Court in writ proceedings. The sale of secured assets is one of the measures to recover the secured debt under sub-section (4) of Section 13 of the Act.

Any person aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Act taken by the secured creditor is entitled to make an application to the Debts Recovery Tribunal having jurisdiction within 45 days from the date and on which such measure had been taken. On such application, the Debts Recovery Tribunal shall consider whether any of the measures referred in sub-section (4) of Section 13 of the Act for enforcement of security are in accordance with the provisions of the Act and the Rules made thereunder. If the Debts Recovery Tribunal after examining the facts and circumstances of the case and evidence produced by the parties comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13 of the Act are not in accordance with the provisions of the Act and the Rules made thereunder, it may by order declare recourse to any one or more measures referred to in sub-section (4) of Section 13 of the Act as invalid and restore the possession of the secured asset to the borrower. Sub-section (5) of Section 17 of the Act also made it clear that such application made by the aggrieved person shall be dealt with by the Debts Recovery Tribunal expeditiously and shall be disposed of within 60 days from the date of such application. If the application is not disposed of within the period specified thereunder any party to the application may make an application to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application. In the light of the said efficacious alternative remedy provided under Section 17 of the Act, the petitioner cannot straightaway maintain this writ petition.

Accordingly, the Writ Petition is dismissed. No costs.

However, this shall not preclude the petitioner to avail the

alternative remedy as available under law.

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G. ROHINI, J.

Dt. 16-10-2006
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